

FTC Workshop: Student Privacy and Ed Tech  
December 1, 2017  
Segment 4: Panel 4 and Closing Remarks  
Transcript

[SIDE CONVERSATION]

KRISTIN COHEN: Welcome back from lunch. We're glad to see that some of you came back. I know it's hard to come back on a Friday afternoon, and I'm told that it's like 65 degrees outside in December, which I'm impressed that you came back. So thank you.

So I'm Kristin Cohen, and co-moderating with me is Kathleen Styles, the chief privacy officer at the Department of Education. I'm going to introduce our panel, and then turn it over to Kathleen to get us started. To my left is David Leduc. He is the senior director of public policy at the Software and Information Industry Association. Next to him is the second David, David Monahan. He's the campaign manager at the Campaign for a Commercial Free Childhood.

And next to him is Francisco Negron, who is the chief legal officer at the National School Boards Association. And next to him is Steve Smith, who's the chief information officer at Cambridge Public Schools in Massachusetts. Rachel Stickland is on the panel. You'll remember her from this morning. She is the co-chair of the Parent Coalition for Student Privacy. And finally, we have Amelia Vance, who is the education policy council at the Future of Privacy Forum.

We've had a little bit of repetition this morning, but this is the panel where we're going to get specific and hopefully hold the panelists' feet to the fire and get actual recommendations. So I'll turn it over to Kathleen.

KATHLEEN STYLES: We're here today till 3:45, so our plan is to-- I'm going to talk with people a little bit first about what's working well, and then Kristin will talk with people about specifics. Again, we're going to be pushing you on specifics-- what you would recommend in the COPPA world, and then I will be pushing you again for specifics on what you would recommend in FERPA world. We'll talk a little bit about the role of-- we're the regulators, but what are the roles of the other groups in industry? Then we have lots of leftover questions-- and some of these are really intriguing-- plus an opportunity for more questions. So we will try to save time at the end for questions and then some concluding thoughts.

So I want to start first of all with two of the players who haven't been up here before as we turn to what's working well, and I want to start with Francisco-- Francisco Negron. And Francisco is with the National School Boards Association, but part of the National School Boards is a group we work with a lot, the Council of School Attorneys. And I wonder if you could share with us just briefly your thoughts on what the role of school attorneys is in this process, and are we in the right place?

FRANCISCO NEGRON: So thank you for that question, because I think that-- and I was tracking the conversation online this morning, and I think that one of the important pieces that

schools bring is sort of the world of school lawyers. As you know, school lawyers represent the interests of public school districts across the country. And so this morning, I heard a lot of conversations about what might happen when notice is supposed to be given or consent requested and who's doing that, whether it's the school board or the teachers. And school lawyers are those I think that are very helpful in helping school districts-- both the administrators and the school boards-- in not only devising policies-- general use policies-- but also in having them respond to what the law says, what the regulations say, and how to act accordingly when they get whether it's a request from a teacher, somebody in the classroom on using a particular classroom technology device.

So there's a very important role for school lawyers, again, not just in helping school districts devise the policies, helping them understand, but, as you know, in providing us with feedback at the national level that we share then with the departments about what some of those needs are. So I think I'm very happy to be here. And hopefully as we get into some of the questions, I'll talk a little bit about some of the specifics on how we can be helpful.

KATHLEEN STYLES: I'm going to turn to Steve Smith now. And since we're on the part of our panel where we're talking about what's working well, several people have mentioned the Student Data Privacy Consortium and wanted to turn over to Steve for a little bit to talk about what inspired you. And I think it was inspiration that drove you to this-- to come forward with this effort, and how does the effort work? Talk to us a little bit about that.

STEVE SMITH: Great. Thank you, Kathleen. So I'm one of a handful of district representatives that are here. I think maybe a couple have left already, but I really wanted to talk to you about the perspective from the district and what it really means in the weeds to deal with all these issues. We've heard throughout the day, we realize how complex all these moving pieces are-- between COPPA and FERPA, and in educating the staff, and vetting applications, and contracting with vendors, and getting a handle on where all your student data is going at the district level.

And to do that properly, the few district representatives that were here have a lot of resources and have spent a lot of time invested in building these privacy programs in their districts. But the majority of school districts-- as was mentioned earlier-- are small districts across the country that don't have those resources. So the Student Data Privacy Consortium was established to help address those operational issues. Where could we replicate best practices and reproduce those efforts in districts? So the consortium was formed under the Access for Learning Organization, because it was already a community of 3,000 district schools and vendors.

And it was important that vendors were a part of that community, because as we've heard earlier, it's not us against them. We need to solve this problem together. And then the first project of the consortium was to replicate a process we established in Massachusetts-- which was then known as the Massachusetts Student Privacy Alliance-- where we shared model student data privacy agreements across districts whenever engaging with online vendors. That grew in Massachusetts out of our work in Cambridge and then partnering with Boston, and then just kind of opened it up to schools in Massachusetts. So it was really an ad hoc grassroots effort to start the alliance.

And the success there led us to trying to replicate it across the country. So under the Student Data Privacy Consortium, that practice is now starting in 16 other states across the country, and somewhere between 2,000 or 3,000 districts are part of that project. California and Texas are included in those, and California actually launched their model contract last January and has had huge success. Just a couple of weeks ago, I was at the CEPTA conference in California, and the excitement and the buzz of the district level in all the meetings about how to roll out this model contract and engage vendors-- it was just exciting to see that.

And that's just one example of a tactical operational issue at the district level that we could share resources and replicate, so that we all don't have to do it again. No matter where we all land on if there are changes to COPPA to align things, I think we still need to think about what it really takes to do this at the district level and make sure that there are tools and resources and best practices to make it happen.

KATHLEEN STYLES: So I want to turn now to our two Davids-- David Leduc and David Monahan. I've got to look at name tags to remind myself about your last name, David. And talk about-- you two, if you could speak-- on your view on some of the things that are working well right now. My view is in the last three years, 3 and 1/2 years, we really have seen some big improvement in this space. There's a lot going on the regulatory end, but also with the other actors in the field-- with schools, with districts, with industry, with other groups. And between the pledges, and the model contracts, and the seals, and-- David Leduc, why don't you go first and tell us what you think is working well in this space now?

DAVID LEDUC: Thanks Kathleen. And first, thanks for having us. For those of you who don't know me or SIIA, we are the leading trade association of software and information industry and the leading representatives of digital education providers. So we've got I think over 100-- about 110 or so digital education providers, so we are a group. We've got some of the largest companies and the smallest companies representing pretty much everybody in the space.

When we look at what's working well, I think it's a great question to ask. What's working? We've talked a bit today about the pledge. We're very proud of working with FPF to create the pledge. I guess that was about three years ago or so, and now we've got more than 300 companies that have signed up and committed to a level of responsibility. And as was discussed earlier, the pledge has been very valuable in, first of all, raising awareness. And I think we launched into a time where there were a lot of questions, and I think it set an excellent framework that a lot of companies have really rushed to embrace.

And we're very proud of that. We think that and other self-regulatory practices have worked really well. We've had a discussion today about some of them, and I'm sure we'll talk more about them on this panel. So I think the pledge is one of multiple self-regulatory processes, but we really look at this as part of kind of a three prong stool. We've got the self-regulatory efforts, we've got the legislation. We've got FERPA and COPPA, which we've discussed have their challenges and raised some questions. But I think it's fair to point to both of them as being very valuable and working effectively in many ways.

And then certainly the state legislation, where we've got more than 100 bills that have been discussed today. And while they present challenges in being disparate in many ways, I think together-- between the federal legislation and regulations, the state legislation, and the self-regulatory efforts-- we feel like they've really combined to move us all forward and to help really provide confidence in education technology over the last few years.

KATHLEEN STYLES: So before I turn to our second David, let me just ask one follow up question. Which is between us as the federal regulators and the various state statutes, are your members struggling more with the compliance issues with us as the federal regulators, or with the state regulators, or both?

DAVID LEDUC: Well, I think that's a good question. I think at this point, a little bit more I would guess with the states, because they're new and evolving and disparate. I think we can talk more about the challenges that exist and maybe some of the ambiguity around FERPA and COPPA, but I think it's really the disparate nature of having to do different things in different states that's quite challenging and concerning. But I think the federal framework places a lot of responsibility on-- it spreads it around, but we know FERPA is focused on the schools. So I think right now, it's really the states that's a challenge.

KATHLEEN STYLES: So David Monahan-- talk to us about your perspective on what's working well.

DAVID MONAHAN: I will. And I also want to say thank you to the FTC and the DOE for having this event and for inviting me. And I'm hearing a lot of things today that tell us some of the good things, which is that a lot of people are asking the same questions. I'm hearing that people from different quarters all want to do the right thing. I'm hearing a lot of people here today say that they care about the well-being of children. I'm hearing vendors and people from vendor associations and people that consult with vendors saying, hey, all of my vendors want to do the right thing. So that's really encouraging to me.

I'm hearing a lot of similar questions about what the grey area is between COPPA and FERPA. So it's encouraging if everyone's saying, hey, let's get some answers and work together on that. Things like the educational purpose-- there seems to be some difference about where we draw the line and whether product development should be considered an educational purpose. But we're kind of zeroing in on that question, so I see that as encouraging.

But I really can't answer the question of what's encouraging without just also quickly mentioning what I think is discouraging, which is that I'm still not seeing parents front and center as one of the players. So when we hear vendors working with school districts working with consultants working with teachers, I'm not hearing about parents. when I read some of the letters of comment to the FTC and the Department of Education saying things like, well, it would be too cumbersome to have parents really exercise the right of consent or opposition, because what would that do if it's an exam that's important or a process in school? Where would we be if someone actually withheld consent? Or you see the concept of, well, parents can't really understand. It's all too confusing for parents.

So when we talk about where do we go from here, from my perspective, an important aspect is how do we get parents more involved, more knowledgeable, more actually exercising the consent. Because I think what FERPA and COPPA were about-- and still are about-- parents actually determining the kind of information that's collected about their children and how it's used. So I'm really encouraged about all of these people being on the same page about chatting, and I hope that an important aspect of that will be how can we get more involved and more knowledgeable and more able to make decisions?

KATHLEEN STYLES: So Rachel-- from your perspective as a parent advocate, do you share David's concern? Do you see any cause for celebration, for anything that's going right from the parent perspective now?

RACHAEL STICKLAND: So that's a great question. From the previous panel this morning, Jeff. Co. is on a path that was largely the result of the inBloom controversy, and so they're doing a lot of really terrific things that other districts may not be able to do. And we passed a law in 2014 and then another in '15 that's just coming into effect now, so we won't really know some of the outcomes of what that will look like. But I can say with a straight face that from a parent's perspective and now having two kids in the classroom, absolutely nothing has changed since inBloom.

From a parent's perspective, kids are still signed up for apps without knowledge or consent. Largely, there's a lot of tech in the classroom that we're never asked to consult or give our opinion about. So I haven't really seen any improvement or areas where I feel like there's a bright light for the future. I will say specifically with the student privacy pledge, it's voluntary, it's self regulating for the most part.

I understand that it is enforceable in some capacities, but for instance, the Electronic Frontier Foundation submitted a complaint in December 2015 against Google and their Google Apps for Education suite, and there hasn't been any formal response for that complaint yet. And so even when it may not be working, it's unclear if it is working, because there's not really any transparent response or complaint process.

And I would also say-- actually, if you don't mind, I might ask the question. We have 300 signatories to the pledge-- how many other ed tech providers in that space haven't signed the pledge? Is that like 10% of the providers? Is it 20%? So it would be great for parents to understand the context of that number. Is 300 representative of a large body or community, or is that just a small sampling?

KATHLEEN STYLES: So I was going to turn my next question to Amelia Vance, and she may or may not have an answer to that specific question. But I wanted, Amelia, your thoughts generally on whether there were things to celebrate in what has happened in recent years-- anything that we need to be doing more of? But also, to ask you specifically, you are our state law expert on this subject. Are there any of the state laws that you think are worthy of holding up for us as federal regulators to think about when we consider what the future holds for us?

AMELIA VANCE: Absolutely. I definitely agree with Rachel. We have a long way to go. We still have a lot of companies that can sign the pledge, can take more steps. We have a lot of districts that still need to be more transparent. And as I mentioned, there's still a really unfortunate lack of training and resources and funding to actually put many of the ideas and laws that have been put in place into actual practice.

But we have had a monumental shift from where we started. I mentioned this morning I run sort of the education privacy resource center website FERPA Sherpa, and one of the things I did when I came on board at FPF was pull all of the resources relevant to student privacy-- most of which didn't exist three or four years ago-- and put them on the site. And there are 450 resources on there. And the guide that David and Rachael put together-- a parent guide-- FPF has put together a parent and educator guide.

There are infographics about how data is used in schools in an understandable, visual way. There are checklists for districts. There are model websites that they can borrow from others. There are a lot more resources. When we started this, it was a fairly barren landscape. You just didn't have a lot, so everybody was asking, well, what do we do? And I think the number of people-- the number of experts who have been on the panels today and really care about this issue show that there has been a real shift in the fact that a lot of people care, and a lot of people are doing things to make this landscape better.

On the state side, I wouldn't-- I'm going to adjust the question just a little and not limit to laws, because laws are just a piece of all of this. Jim Siegl, who was on the panel earlier, has a framework which I love to talk about, which says you don't just have to ask about legal compliance when you're thinking of adding a new ed tech tool, or developing a new product, or anything. In this space, you should be thinking not only the legal side, but also is this a good privacy or security practice? Posting a child's photo on social media or having them write a blog online may not violate a law-- but depending on the norms of that community, may violate what people feel is their child's right to privacy.

You may also have perception issues, which are so rarely dealt with, and are so much of the reason-- the lack of transparency, the undermining of trust that led to so much of this. You have to put yourselves in the shoes of the parent and the student themselves and ask is this creepy, for one? Does it pass the creepy smell test? Is this smart? Is it actually being used for a pedagogical purpose that makes sense? Have we thoughtfully adopted this?

So I don't want to limit us to thinking about just the laws here, because I think what FTC and what PTAC has done so incredibly well at the Department of Ed is provide guidance on how we get there and gather all the best practices from stakeholders. So states that I would point out on both the legal and best practice side-- West Virginia has an incredible governance program. When all of this started, they went around the state and had meetings with the State Board of Education and the state education agency and said, OK, what do we need to do? And they brought in the loudest people in the state who were worried about these things and talked to every single one of them when they developed their policies. And so having people in the room, I think, is key.

As I mentioned earlier, Utah is one of the only states that has actually really funded this. And one of the things they funded was a dedicated trainer at the state level who goes out to districts and helps them with all of these things, and has helped them create model contracts and training materials and everything else, so those districts of 50 kids don't have to do this alone. Wisconsin-- not because of a law-- has the best student privacy website of anyone in the country. They have a module on training on how you use PII, they have resources, they have really understandable resources for parents. So there's a lot of examples out there. There's a lot of things that are going well. But on the other hand, there is still a long ways to go.

KATHLEEN STYLES: OK. Well, I'd like to dig in a little bit on some of the burning COPPA questions. I think this is the only crowd I could refer to burning COPPA questions, but I will do that. So I'd like the panel to imagine that it's a clean slate-- that the FTC has said nothing about when schools can give consent, or what the parent's role is, or what the vendor's role is. What should that process look like? Should schools be able to give consent for the use of this type of technology in the classrooms? And if so, what kind of notice should they be required to give to parents? Keeping in mind what we've heard today around the administrative burden on schools of potentially going out and getting parental consent, but also the really legitimate concerns that have been raised by parents about the use of this data-- their children's data-- and the need to have parents involved and aware of what's happening?

FRANCISCO NEGRON: So if I can start with that one and jump in to say that I think that you're talking about a world where you haven't said anything at all. So I think the first thing is just to acknowledge that COPPA itself is sort of an imperfect creature, and that it was not intended to the applicability to schools that we now know we're all here to consider. So I would start with just that. And so I would start by asking, well, where are the scenarios where schools are using technology in the classroom? What are the ways that they're using it that's different than at the time of COPPA?

So take for instance the large scale data aggregation programs and testing systems that schools use at a district level. So that seems to me to be markedly different in the approach than something that an individual teacher might use in a classroom. Because when it's the district doing something, then it's probably subject to all kinds of legal review. Contractually, it's probably been vetted by the school board, who's approved the contract. And so parents by and large have all kinds of information about what the district is getting ready to do with information. So notice and consent is, I think, ostensibly a lot easier in that scenario.

But then when we're talking about a teacher in a classroom, that vetting may not happen in the way that it happens with those large scale contracts. And so I think what I would say to the FTC is, well, look at what the needs are now. Don't assume that there's one solution for everything. I think it's important.

And one of the things that we at the National School Board Association have said to the departments is you have an important role as conveners. You might want to convene school districts, practitioners, school lawyers, and operators in the area of school technology so that we can talk about what the needs are of vendors, what the needs are of schools, and then how it's actually being used, whether it's in the classroom or whether it's these sort of district wide

programs. And then we can sort of tailor responses. My sense is that one size fits all is what hasn't worked here through the guidance for COPPA.

KATHLEEN STYLES: Anybody else want to jump in on that?

DAVID MONAHAN: A couple of things I think are important-- as you might guess, one thing I would suggest is making consent real-- giving parents the actual ability to know what kind of information is going to be collected, what kind of websites children are going to access, how the information is going to be used-- giving them the tools to really become part of the dialogue again. One of the comments I heard earlier today-- Melissa was actually talking, and her district we heard has been certified with a trusted seal, which is terrific. And we can hear that she cares, and her district is doing a great job.

But she said that when parents come to her and say on occasion, I don't want my child to be on the internet at school, or I have an issue with them using this app-- if I got it correctly, I understood her to say, well, we have a conversation. I'm sure she does that responsibly. And she said, well, occasionally, we'll make an accommodation with them. But more often than not, they understand that they can trust us, and it's fine. And I'm thinking, well, what happens with the bad districts who aren't doing a good job? Then, it really would amount to coercion if they're having a conversation with the district and the district saying, look, the school has the right to give the authority. Trust us, it's going to be fine. That's just one illustration of where I think parents need to really have the ability to consent.

Another piece I would want to really be strong if we're starting from scratch is the data protection-- preventing breaches. We haven't heard a whole lot about it today, but we've heard about the data breach map. We know it's a problem. And that's one of the things-- when a parent is saying that they have reservations about their child's information being collected and shared, oftentimes it's because of the fear of where it could go. It could go anywhere. And we heard a discussion today about not operating from fear-- well, a healthy caution is something that I think we all need when there are so many breaches.

So I think for COPPA to really have some strong protections to make sure that companies are doing the right thing-- Bill from Common Sense Media mentioned how some folks come to him, and he sees great terms, and then he sees some really terrible terms where they don't even match up with the app. And I'm thinking, imagine what kind of data protections a company like that has in place. If they don't even know enough to have terms that match up with their app, my goodness, they're probably not taking good care.

And laws are necessary in order to protect the public. It's great that everyone in this room wants to do the right thing, but there are others that might be lax about it, might not have made it a priority. And if the law is necessary to force them to make it a priority, then let's do that.

KRISTIN COHEN: Can I just follow that up? What would you say to the folks who might say going out and getting that parental consent is an administrative burden on the school, or just the idea that there might be some parents who-- not because they actually have a problem with the ed tech, but they're busy people, they don't sign the form. Do you see that as a real concern?



DAVID MONAHAN: I understand it's a real concern, because I'm hearing a lot. And I think one of the difficulties is that this transformation has happened so fast, as everyone knows. In just a few years, all of a sudden so much of our children's education and our school's administrative procedures are all electronic and digitized. And so now all of a sudden you have that kind of problem of, well, how is that consent going to fit in here? Is it going to throw a monkey wrench into things?

And you know what? In some instances, I think a school may need to pull back, and may need to say, well, we goofed. If we didn't have children's privacy front and center when we were deciding whether to use the system or to use the software, then we goofed, and we need to pull back and figure out how to incorporate that and how to give parents the ability to really protect their children's information.

KRISTIN COHEN: Did you want to jump in?

DAVID LEDUC: Yeah. I think one of the key points I heard earlier today-- and I think one of my key takeaways-- was that hearing from the school districts say, if we make this too difficult, then teachers either aren't going to use the technology, or they're going to use it, and they're not going to tell us. So I think that speaks to if we make it too difficult though, the technology won't be used, and it will be a road block. So that's why I think this is a very valuable discussion. I think the current framework is pretty well structured in its current regard in terms of having the schools be able to provide that consent, having them work closely with the vendors, having the vendors have responsibilities.

So I think the model works. I think there are certainly concerns. I think we heard a lot today, and I think industry can certainly continue working with schools and keep striving to do a better job. And I think a lot of the resources that have been suggested here today and talked about I think will be helpful. But at the end of the day, I don't think it would be good to move to a model-- I mean, I'm a teacher. I'm a parent myself of small children in Fairfax County, so I know how difficult it can be with a lot of stuff coming home and returning papers. And I know that my household and our school district isn't like all of those across the country, so I'm sensitive to the challenges. And I think we certainly don't want to lose the opportunity to utilize the technology.

RACHAEL STICKLAND: May I dovetail on something David Monahan said just very briefly? Which is as a parent, it's very difficult to wrap my head around the idea that children in the consumer space would have better protection and more parent involvement than the educational context-- that somehow, the same rules don't apply when kids are in education-- the same protections against commercial use of data. Because if an operator is subject to COPPA, they're using that data commercially, right? I mean, that's the assumption-- that they are a commercial entity.

And so even if they are producing an educational product, they still are a commercial entity. So it's just it's very odd to me as a parent to hear, gee, you as a parent have this ability in the consumer space. But in the educational context, we're just going to strip this right from you, because administratively, it is too much of a burden.

DAVID MONAHAN: Can I add real quickly to that? And one of the comments that was filed with the FTC and the Department of Education-- I think someone was making a point that I agreed with about not using the information to target kids. And they said it shouldn't be the price of wanting your children to get the best education possible to have to give up their privacy. And I read it and I said, well, good point, but you didn't go far enough. It's the education.

If you want to send your child to a public school, it's not like you're saying, well, I'm seeking out the best school possible, and they have this amount of testing or this amount of processes are online. The majority of time, it's someone saying I want my child to go to the public school, and here are all these systems. So that's how important it is. It's like if you want your child to get an education, we're now saying, sorry, you just have to give up these privacy rights to some degree.

STEVE SMITH: I'll take a shot at this. So I completely understand your perspectives as a parent as well. But I think we need to separate the commercial from the ed tech. If we were going to start from scratch similar to Francisco saying one size won't fit all-- whether it's one law with different rules-- it's an educational setting versus commercial. And the educational side needs to align with whatever the FERPA requirements are so that we aren't talking about two different standards.

Your point, Rachel, about not having as much protection in the educational environment-- I think you're making an assumption that-- again, just with all due respect-- that the apps are not being vetted properly, and an informed decision is not being made by the schools, because we're sending our to schools every day and we entrust the staff and the teachers that they're going to make the right decisions about the kids with their lives. And then to think that we're not going to make good decisions about the tools that they use-- I agree that we are still kind of reacting to some things that have happened in the past.

But if we do get to the point where schools understand the importance of this, and that the cultures change, and teachers understand why it's important not to just use apps, and there's a process in place where things are vetted similar to curriculum, parents have input into those decisions-- I agree, parents should have input. I just think the consent model is-- as has been brought up over and over again-- is just too burdensome. Not only burdensome just because of numbers of apps and tracking it, but also then which kids can use this app and not that app. And I think we need to look at the approved technology resources as part of the core curriculum tools that have been approved and vetted completely. And I know we have a long ways to get there till we have rebuilt the confidence of all the parents that the decisions being made are appropriate, but that's the direction I think we have to go.

AMELIA VANCE: I'd love to add a couple things, if that's all right. So my organization works on consumer privacy more generally, and there's been a conversation happening in the broader privacy community around what is the value of consent. Technically, we're all consenting when we click OK on the terms of service when we sign up for various things every day, and what is the value of that? The thing I worry about a consent regime-- in addition to the administrative difficulties and the fact that, as Steve mentioned, we don't have parents approve every single textbook and the desk their child sits at and the grade book that is used-- you also have a situation that I worry about if we're talking about bad districts.

I worry about more a district passing the responsibility onto a parent who doesn't probably have the expertise to evaluate the privacy and security implications of a particular app. If something is dangerous, it's not that it needs parental consent. It's that it should not be used in a school. When we talk about consent, I think we need to be very careful about not passing the buck onto parents. As I was saying about-- or Bill was mentioning too-- about transparency isn't a 120 page PDF, it's actual easy to understand things. So we just need to be very careful. This is a nuanced conversation.

I think it's also important that as much as we want to say maybe let's clean the slate and start over and say maybe tech in the classroom doesn't work, it's not going to happen. We've seen countless surveys-- first of all, in the future of work space-- where every single person who graduates today needs technological skills. And every parent that's surveyed-- at least in all the surveys that I've seen-- wants their child to learn those technological skills. And we need to make sure we do that in a way that protects student privacy.

But we also need to acknowledge that for better or worse-- and I'm an optimist about a lot of this. I think it can be for better, and we can work to make it for better-- tech is here. Tech is in the classroom. So what are the safeguards we can put around the guardrails to make sure that our kids are as safe as they can be while enabling the advances that technology can bring to education?

KRISTIN COHEN: Well, bringing us back to the real world-- we're no longer with the clean slate. And this kind of dovetails with what Amelia was saying around the consent model-- I think one of the things the FTC tried to do in our updated education FAQs was look at the uses of the data and to say that schools can only provide consent where it was going to be for an educational purpose only, and that that information couldn't be used for another commercial purpose. And I think part of the reasoning was around this idea of prohibited uses rather than the consent model.

But my question is what should that mean? There's been a lot that we've heard today around what do we mean by another commercial purpose? If you're using that student data to improve that particular product that you're going to sell to other schools, is that another commercial purpose? Or is that educational, because you're improving an educational product? What about if you're using it to improve a completely different educational product? What if your educational product is sold to schools, but it's also used by kids that just find it on the internet on their own? How does that dovetail? And so I'm going to start with you, David, and get your view on that.

DAVID LEDUC: Thanks. I think that's a good question, and it's a good segue from Rachel's point, because I'm certainly sensitive to that-- the notion that there's one standard for parents outside of the classroom and then another one in a classroom. And I think having the educational purpose and commercial purpose is actually the right framework for making sure that it's balanced and that it's appropriate. And I think it is a tough question. I think the current guidance is good. I think it certainly doesn't do what everybody hopes it would do, and you're looking for a lot of detail here.

I think it's useful to say, well, this is clearly a commercial purpose, and kind of draw out what quite clearly is commercial. And I think the discussion earlier today has indicated that there's a

lot of a grey area, and I'm not sure that we can avoid having a lot of grey area. But I think the key point is companies want to make their products better-- as good as they can be-- and I think schools want that. And I think students and their parents ultimately want that.

So with that as the goal of having the products and the education be as good as it can possibly be, I think it does make sense to allow the data to be used to improve the products. And frankly, I think that means not necessarily just the product in a classroom, but in other classrooms and in future classrooms. I think that's a goal on behalf of industry to continue improving the products, and I would think that it would be consistent with what most of the schools and teachers would want to see.

KRISTIN COHEN: Just a follow up question I've had on that point is do companies really need that data to improve their products? We always talk about it as if that's a foregone conclusion. But if you have anything to add about why that student data really is useful for improving the product, that would be interesting.

FRANCISCO NEGRON: And let me just add on to that question-- what precisely is that data? You ask the question about data-- not getting onto you-- as if it's just one set of parameters. Are we talking about personally identifiable information? Are we talking about the fact that this is an application or a technology product used for all second graders? I'm just guessing. So we need more definition there, because that doesn't seem to me to violate anybody's privacy if they're using data that says-- or information that says-- this product was used by second graders, and they clicked on this this number of times. I don't know that that ties into PII, so what are we saying when we say data? What are the specifics that we need to talk about before we get to sort of the commercial use?

DAVID LEDUC: I was going to respond to that, and I think that's a very useful point, Francisco. I appreciate that. We've long been supportive of privacy by design and to whatever extent possible to the extent companies can use anonymous data or de-identify. And I think in a lot of these cases from what I've learned talking with different companies is in many cases-- if not most-- a lot of that data can be used to actually improve the product. So it's not always personal information that's being used to improve the products.

And certainly, as a best practice, I think companies should-- and most of them are-- trying to be responsible and trying to do this. And the guidance I think the FTC ha-- outside the privacy sphere, outside the education sphere, and certainly within it-- I think been supportive of de-identification. And I think that that's something that we're appreciative of, and we think in the Department of Education has as well. And we think that's very helpful to the extent that the policies can continue to encourage that-- not required in some cases, it's not possible-- but to encourage-- and for companies to really take that seriously and to do as much as they can.

KRISTIN COHEN: Looked like Rachel or Amelia had something to say.

RACHAEL STICKLAND: Thank you. Yeah, I just want to quickly say I don't understand why education technology gets a pass on this. I would love to hear if anybody has an example of other companies or other industries that can go in and product test with students' personal information

and refine and develop those products and then market them back to kids. If there's another example, I'd love to learn about it. Because it just seems completely inappropriate that this particular industry gets a pass on using students in a compulsory environment and a very personal, very sensitive, and gazillions of data points that they're shedding in a day's work at school can then be used for further product development. That's very perplexing to me.

KRISTIN COHEN: I just want to follow up on that a bit. So would there be a difference in your mind between using that personal information-- you're saying market back to kids-- to say, oh, you liked this reading app, here, try my math app versus using that personal information-- and maybe it could be de-identified-- to say, oh, look, kids who had problems with this particular type of math problem really benefited by trying this-- various kind of analytics that I think some of these companies might be talking about when they're talking about improving the product.

RACHAEL STICKLAND: Yeah. I think there's a little bit of a distinction there but still not much of one-- maybe not one enough to push us to come up with a separation of those uses from a parent's perspective. I think that commercial use is commercial use. And we've spoken today and heard a lot today from folks who have recognized and acknowledged that de-identification of data at this point with all the metadata that there is is virtually impossible.

And some of the metadata, frankly, is more personal than your personally identifiable data, right? Your interests, your tendencies, your reactions to certain things-- and that actually is far more powerful in some regards than your name and date of birth. So I'm not sure parents see a distinction between developing the product that's being served to the kid at the point of interaction or future products and services.

AMELIA VANCE: I think it's worth noting though-- with tech, we always act like it's brand new. The thing in education is we've always changed how we teach and what we think is the best way to do things. And in a way, that's the offline equivalent of this. There were studies that said that, for example, small class sizes in third grade helps students do better. And in a way, when we're talking about product improvement, that's what we're talking about. We figured out that giving more individual attention or allowing the ability to define words in this reading app works a little better.

Product improvement also includes things like fixing it. So where you get into access to personal information is this user reports a bug or something keep shutting down the app. If any of you have phones, you know how often that can happen and how many updates are pushed out. Each of those updates happened because there's been product improvement. They figured out there was something that was broken or something that wasn't maybe working quite as well, and they figured out how to move to the next step, how to fix that. So I do think there is a real distinction when you dig into it between using data for product improvement. This is a spectrum, and it's clumsy, and I think it's nuanced.

But the law is very good at dealing in spectrums. And I think maybe an area where the FTC could be helpful here is something based on what Department of Ed has done-- the model terms of service document, which is fantastic. It has a chart that lays out not you must do this, but on the spectrum-- when you're looking at terms of service, here is what's absolutely bad, here is

pretty much the minimum of what you want, and here's the best practices. And it acknowledges the nuance that exists in laws and different types of ed tech products. And I think having that sort of thing when you're dealing with whether something is a strictly educational or strictly commercial purpose-- it's a little combined. And figuring out what are the cases where we're absolutely this is definitely a commercial purpose-- because I think a lot of us at this table could agree on what a lot of those things are.

RACHAEL STICKLAND: I just want to make one brief point, which is I appreciate your comment about the small class sizes. That was based on research.

AMELIA VANCE: With children.

RACHAEL STICKLAND: Well, but that's a research project, which is a little different than product development and using student data to develop products. I make a clear distinction between research and having kids improve a product with their data. That's just me.

KRISTIN COHEN: Go ahead.

DAVID MONAHAN: Thank you. With all due respect to Amelia's perspective, the research that was done in classrooms about children's performance didn't involve saying, and John Smith had this score, and his birthday is this date, and he was vaccinated for the flu last week, and his mother-- you know, all the things that are tied today when we're talking about collecting this data. So it's very different.

AMELIA VANCE: But it's disingenuous to say all apps collect that information. It's a variety, just like everything else. This is very nuanced. Most apps-- they have a name, they have an email address, and they did how that child does things.

DAVID MONAHAN: And we're talking about parents having the right to know what the app is, what it will collect--

AMELIA VANCE: And they should.

DAVID MONAHAN: So my main point on that is I think-- especially if the school is going to give permission and the parent is not going to give actual consent-- it should definitely exclude any kind of product development research. If they want to get the parent's actual consent and give clear and conspicuous information that says we're also going to collect information and use it for research and development, are you OK with that? Then that would be OK.

KATHLEEN STYLES: Francisco or Steve, do you have views from the school's perspective on this?

FRANCISCO NEGRON: Well, I think that, of course, when we're talking about COPPA, none of these notice requirements apply to them, because it's a vendor-side issue. But if we're going to make it a requirement, which I think is problematic, then we ought to be quite clear what you

mean by product development and using it for commercial purpose. If schools are going to somehow be held liable for activity that a vendor is engaged in--

AMELIA VANCE: Let me just be very clear. The schools will never be held liable under COPPA.

FRANCISCO NEGRON: You heard it here. I can go home now. I think I got what I came for. But I think that's the concern. The concern is how do we know when we contract with-- and I'm not talking about something that happens just by a teacher in a classroom downloading an app, I'm talking a sort of a broader contract-- if we're going to have language in a contract with a large scale technology provider that says you're never going to use this for commercial purposes, I think it would be helpful to know what we mean by that. And I think that's really what Amelia was trying to get to.

It's very nuanced, right? They may be problem solving and debugging a program. That's arguably going to give them a commercial advantage over somebody who doesn't have those bugs, right? So is that a commercial use? So you see--

AMELIA VANCE: Just clarity.

FRANCISCO NEGRON: Exactly Clarity is good. And so that's what I think what would be helpful to us.

KRISTIN COHEN: Well, I need to turn this over to Kathleen to ask some FERPA questions, but I have to ask one more.

FRANCISCO NEGRON: I think Steve had also something to say.

STEVE SMITH: I want to steal an answer from my PTAC friends and say it depends.

KATHLEEN STYLES: Raise your hand in the audience if you're counting the number of times.

STEVE SMITH: Because we do flip-flop back and forth on this particular issue. Our model contract right now says they can't, but lots of times we change it. And it depends on those nuances. We talk to the vendor, and it's very specific how they are de-identifying the data and what they're going to use it for before we would agree to it.

KRISTIN COHEN: So I have one more question, and I think I know the answer from David and Rachael, so I will just tell you what I think your answer is. And if you disagree, you can jump in. But I really would like the other panelist's opinion. One of the things that has come up is about where schools are providing the consent. What should the role of parents be in terms of being able to have their child's information deleted and access to the data? I assume that David and Rachael would agree that parents should be able to delete that data and have access to it and be able to do that through the school or through the vendor. Would I be accurate?

DAVID MONAHAN: Yes.

RACHAEL STICKLAND: Yes. I'll add this. We've never had a parent contact us and say, can we please have less rights?

KRISTIN COHEN: But I guess I would love to get the opinion from Francisco and Steve specifically about how that would affect the school and if that's a concern in terms of maintaining our educational records and that relationship with your records and data and parents.

STEVE SMITH: Sure. So there were two questions-- one was access to the data. Parents definitely should have access to the data, and that should be laid out in the DPA as far as having access, just because of the relationship of the vendor to school relationship. It at least now comes through the school to provide that access, but no obstructions whatsoever if they want to have access to that data. As far as deleting the data, it kind of gets back to this being a core piece of the curriculum and the instruction in the classroom. And I guess I would have a hard time deleting the data.

I certainly want to have conversations, again, about why they want the data deleted. What are the concerns? Are there things that we missed as a school department that we should have taken into consideration that the data shouldn't be there? Are there things that raise a risk for that child? And we would want to address those, and maybe we shouldn't be using that service. But for individual parents to pick and choose I want my child's-- I'm having a hard time with data deleted today-- from this application or that application, I think would hinder our use of the technology in the educational process.

FRANCISCO NEGRON: And I would say just to give you the answer that was popular earlier about it depends. And I would say that it depends on what the purpose of the data is. If it's something that the school district needs on a continuing basis, I don't think a parent should have the right to delete that information any more than they have rights under current FERPA law to make modifications to school records, because the school, as was just mentioned, may actually need that. If that information is no longer necessary for some reason-- if it's a one time thing, or if we move to a different vendor and that data is no longer needed-- then I don't see necessarily any reason why a vendor needs to retain it.

So again, it's not a one size fits all. If you get anything from us today, is that you need to be very careful-- to use Amelia's words-- about the nuances involved. One size fits all is not the way-- we ought to deal with the realities, the operational pieces of what's happening in the school district, how schools are using the data, how teachers are using it in the classroom, and be very careful of trying to use a one size fits all rule to cover all the different scenarios that might occur.

AMELIA VANCE: I want to really quickly add, too-- if parents don't have the deletion right under COPPA for purely educational apps that are used in the classroom, they still retain their FERPA rights. And their FERPA right is to be able to challenge that information through a couple levels of process and say that this should not be in the record. It's the reason behind FERPA. It was a civil rights law in many ways, because there were things in records that shouldn't have been there. And so when we're talking about this, I think we need to keep the FERPA context in mind-- that there are pretty substantial protections built in that can be utilized



to make sure parents do have access and can challenge any data that's in the record that should not be there.

RACHAEL STICKLAND: Well, from a practical perspective-- and I'm sorry to jump in-- but from a practical perspective, parents across the country reach out to us and say that their district doesn't exactly know what an education record is. So for example, there's a classroom app that's very popular, and teachers log student behavioral events, right? And so your child is signed up for this app without parental consent, without knowledge. Information comes home that you can create a parent account if you want to, but at the end of the year, it's not clear.

Is that an educational record? Is it pertinent to the student's transcript? And does a parent have the opportunity to delete that information because it's behavioral events on an everyday occurrence? And it's not understood well enough whether or not that's part of the educational record and you can access it, or if it's not, and it's covered under COPPA and you can delete it. It's very unclear. And that one-- I would say an app like that is the grey area we're talking about, frankly.

KRISTIN COHEN: I do need to turn it over to Kathleen. But before I do, I just want to remind the audience that we are taking audience questions. So Kathleen's going to ask some questions, but if you have questions, just raise your hand. And somebody will come by to pick up your questions, and we'll try and get to those at the end.

KATHLEEN STYLES: Because we're going back into FERPA-- dive in FERPA. A lot of the discussion that we have just had about that continuum between product improvement versus advertising and where a given action falls there-- we have the same issue on where to draw the line under FERPA. And I wonder if I could just get a quick vote from the audience. How many of you would like us to have the same rule under FERPA that the FTC has under COPPA?

AMELIA VANCE: Depends on which rule it is.

KATHLEEN STYLES: She said it. She said it. Maybe if you all can briefly address-- Amelia says it depends. Did the rest of you all have an opinion on whether we should have the same rule?

STEVE SMITH: As long as they're the same, you're saying.

KATHLEEN STYLES: So long as you like it, it's all right if they're the same.

DAVID LEDUC: Yeah, I guess my remarks that I made about in the COPPA context I would make here, and I would say, yes, they should be the same. So it depends, but assuming that's true, you're right.

KRISTIN COHEN: All right. So I'm going to try to ask a really specific question here. And this is a discussion panel, and this is going to be hard for you. I'm challenging you all now. One of the requirements we have is that the school has to maintain direct control over the data in the hands of the vendor. And if we were to be more specific about it, I'm going to ask each of you to

name one thing that you think a school or school district should do in order to maintain direct control. You can have the same answer as somebody else.

I'm really not looking for an exposition, I'm looking for you should have a written contract, you should have a provision that says this, you should have a requirement to check back with a vendor regularly, you should audit yourself, you should audit the vendor. I'm looking for a specific action, and just one. And I'm going to start from this end-- David. Oh, do I need to start with Amelia? Amelia, your turn.

AMELIA VANCE: The ability to access and delete the data whenever they want.

RACHAEL STICKLAND: I would say just like with the audit and evaluation and study exceptions in FERPA that require a written agreement, I think the same should be for school official exception.

KATHLEEN STYLES: Steve?

RACHAEL STICKLAND: You can say ditto.

STEVE SMITH: I was going to say both-- both the written agreement, as well as the ability for the school district to go in and access and change or remove the data-- have complete control.

KATHLEEN STYLES: Francisco?

FRANCISCO NEGRON: Ditto. Ditto on all of this so far.

KATHLEEN STYLES: We have ditto heads here today.

DAVID MONAHAN: Nothing to add.

DAVID LEDUC: All of the above. I think there's a number of different approaches that work. I think there's really a range. So whether it's a written agreement contract or-- frankly, I think one of the-- this is expanding a little bit. I know you wanted a short answer. I think a lot of products provide for dashboards and ability to provide control and turn off modules and turn on the modules. So I think that's another element outside of that traditional agreement contract ability.

KATHLEEN STYLES: So you're agreeing with Francisco on the there shouldn't be a one size fits all. But I have to tell you we're regulators. And when you talk about regulations, those are one size fits all. Guidance you get some discretion in there, but in regulations, typically we're going to tell you you have to do x.

So my final FERPA question is going to be about the scope of FERPA. And we all know that FERPA covers education records, and those of you who are lawyers and have been playing in the space a lot will know there was a 2002 Supreme Court decision-- the Owasso decision-- that at least in dicta talked about a fairly narrow scope for FERPA. Which parts-- which data items, broad to narrow-- do you think FERPA should cover in the ed tech context? Is my question

sufficiently clear? I know Amelia is going to understand it, because we've talked about this before. But let me see if I could try that again. So would you have FERPA be the law that covers every keystroke of every student or the education record maintained in the central file and held for longer than a year or some of the more restrictive notions that we sometimes see asserted?

STEVE SMITH: I'll go first. Because of the nature of the online tools, the position we take-- and I think the only way to really ensure that we're capturing it all-- is whenever a student logs in to an application, there is potential of capturing some part of the student record. So to me, it's everything because of the potential. Once you start-- I've been dealing with this for almost 10 years, talking to vendors about what we want to protect and why. And once you start going down the hole of this isn't an educational record, this isn't PII, you never get out of it. So it's like once there's the ability for student data to be captured, we need to protect it the same way.

RACHAEL STICKLAND: I would agree, yeah. I know it complicates things for school districts-- I'm sorry, Amelia, I just interrupted-- because when parents ask for access to that information, obviously it's going to complicate that issue, because it's very difficult even now for schools to know if some of that metadata-- the data that some folks say are not identifiable-- to provide that and give access and the ability to correct. But I agree in substance with what you say exactly.

FRANCISCO NEGRON: I just wanted to say that I'm going to, again, give you my one size fits all anti-regulation speech. What I'm saying is that a record that says here are the kid's grades or here are students' performance or this is how he did certain things is markedly different from-- although in concept, I agree with what Steve said, is metadata, is a number of keystrokes, is the time that it took a student to select an icon-- is that really a student record? And if it is, then how does the school provide that?

Do we now have to create a record which FERPA doesn't require us to do? So now do we have to have in our contract with a vendor you must provide us the information in the way that it's requested by the parent, which is the number of keystrokes? I mean, we're going to have to create a record. It's just untenable, I think, to do that. So we have to understand what we're talking about when we're talking about metadata, about the information that's actually being used for the commercial purpose. We need clarity there, OK? Not just about the actual use-- like they're taking a list of students-- which is I think what we're all thinking about-- and selling it to somebody else, or saying kids like the color blue, and we have 100,000 kids in our database, and we know that. And so that's useful for your marketing purposes.

We need to sort of get away from those concepts and try to understand what really we're talking about when we're talking about the information. FERPA talks in terms of student records, and not every piece of information in a school district is a student record, even if it relates to student. So I would caution that we need to apply that same kind of nuance. And I know it's not going to make you happy, Kathleen, but it just concerns me. I don't know how we would actually respond as a school district to that.

DAVID LEDUC: I agree with that. I think at one point when FERPA was created, I suppose, an educational record-- you knew what it was. It was a number of variables. And with so many other data points, I just don't think it's practical to roll everything in and say all this data is now

an educational record. It's not practical for the schools, for the districts, for the vendors. And I think it's generally not desirable.

AMELIA VANCE: I think we have to be really careful too about-- as Francisco was saying-- not creating an unfunded mandate that cost \$10,000 to pull keystroke information, which really wasn't what the parent wanted in the first place. They may have wanted more of the behavioral information that comes from that app or something like that. I absolutely think that we should protect all personal information, whether it's considered part of the education record or not.

I also think that when we're talking about access to it, we need to think in terms of why FERPA was created in the first place, which was to make sure that parents could see the information that was being shown to others about their child or stored about their child. And most of the time, when you get access to the record or request, it's about a specific thing. It's why wasn't my child chosen for the honor program, or why did my child get disciplined, or things like that. And I think-- again, I hate to keep using the word nuanced here-- but I think there has to be a level of nuance to make sure that schools can practically fulfill what parents need to see, but not a mandate that every keystroke needs to be there. But if it's personal information, I think you can add the nuance that that does need to be protected, even if every keystroke doesn't need to be given in a stack up to the ceiling to the parent to fulfill FERPA's requirements.

KATHLEEN STYLES: So David Monahan gets the final word, then we turn to Kristen, who will start asking questions from the audience.

DAVID MONAHAN: I was just going to say to Francisco's point-- we can hear this is one where everyone is going to need to put their heads together. But to Francisco's point, there may not be that clear a divide between the personal information of results and how many kids like the color blue. Because there is a grade area where it's like, yes, and this particular kid loves the color blue and loves this particular movie. Let's start to target them with advertising for that movie.

FRANCISCO NEGRON: And we all agree that that's the inappropriate use. We all agree to that.

DAVID MONAHAN: Glad to hear that.

FRANCISCO NEGRON: We all agree that that's not [INAUDIBLE].

KRISTIN COHEN: Just before I move to the audience questions-- and I think Kathleen kind of asked us, but I just want to ask it a little bit more specifically. Is there something you think that the FTC should do to harmonize the COPPA rule more with FERPA? And one question that we have heard is that maybe schools should only be able to give consent where schools are using a vendor under the school official exception. Would that be a worthwhile way to think about it? What are some of the problems, if you foresee any, with that type of regime? And I open that up to anyone.

RACHAEL STICKLAND: That would be wonderful.

AMELIA VANCE: I would say not until FERPA is modernized. I think it's a mistake to sort of-- we're at a crossroads here. And instead of moving forward, that would be a step backward, only it would make administrative process easier. But until FERPA is clarified and modernized, I don't think it protects kids any more than it does now.

KATHLEEN STYLES: Anybody else?

STEVE SMITH: That's kind of the model we've been working under currently.

DAVID LEDUC: Yeah, I think it's pretty consistent with the current model where things are right now.

KRISTIN COHEN: OK. So we did get a number of audience questions. So this question is for you, Steve. An audience member asks, do schools ever reach out to vendors to ask that student information be deleted, like at the end of the school year, or when they graduate? Or do you foresee that some vendors are just holding onto this data indefinitely and it's never being deleted?

STEVE SMITH: So we definitely do that. It's in the DPA that both at the end of the service arrangement, all data would be deleted, but then also as part of our purging of student records as students graduate, we'll make sure the data is removed. And then we usually ask for some type of a certification that the process has happened. But again, we're one of the handful of districts. So across the country, I'm sure it's not a common practice, just because of the resources and effort it takes to do that.

FRANCISCO NEGRON: Well, if I can comment-- I think to the question that we started with, Kathleen, I think this is a great role for the school attorney, right? So these are clauses that school attorneys normally seek to put into contracts with vendors-- that there's not only deletion, but then also returning the information to the school district. There are also provisions that we recommend that school lawyers put in, which are audit provisions so that you can ensure that the information is in fact deleted and handled appropriately. So there are mechanisms to do that. And through the school lawyers-- that's one way to achieve that.

KRISTIN COHEN: OK. This one's for you, Rachael. Should a few extremely privacy protective parents able to veto the use of educational apps in the schools? And if not, how can parents give meaningful consent?

RACHAEL STICKLAND: Well, to answer the first part of the question, I would say privacy is certainly one of my concerns and one of parents' concerns, but also the lack of evidence or research that these ed tech products are going to do what they say they're going to do when introduced in the classroom. So I think rather than vocal parents vetoing something, I think the school district should bring parents in at the very early preliminary stages and make the case for the ed tech and work together. And not just the benefits, but also let's talk about the reality of ed tech, and the screen time, and exposure to content that maybe hasn't been vetted by necessarily educators. So I never would promote that vocal parents should be obstacles. I advocate that schools should see parents as allies and work together.

DAVID LEDUC: May I add to that? I think a foundation that we bring to this whole discussion is questioning what good is being done-- whether our kids are better off with the technology. And we're hearing that tech is here. Tech is in the classroom, accept it. But there is not the evidence showing that kids are better off because of technology. I'm sure a lot of people in this room read the article last week in The New York Times by a professor at University of Michigan who does not allow laptops in her classroom, because she has seen with her own eyes, and she has read all the studies that say students do worse on their laptops in class than they do just listening and taking notes with paper and pen.

So when we talk about this transformation, not only have parents been left out of the conversation as it pertains to consent, but where is the evidence that kids are better off? That's the foundation that we have to really consider when we're discussing what have we given up with privacy, and what are we gaining?

I want to add to that just really quickly. I think you're absolutely right. We need more efficacy studies-- which, by the way, include some of the data we're talking about for product improvement and development, so we need to make sure we're careful there, too. But that article in The New York Times mentioned that she does allow laptops for students who need accommodations in the classroom. And the negative effect of her banning it is she has now put a banner on everyone's back who has a disability and violated their privacy that way. Again, this is very, very nuanced, and we need to be careful about what learning styles work best for everyone.

And I think this is where Rachel is absolutely right. There needs to be a conversation in that community and bring in the parents to that discussion as tools are adopted, because this is really a local issue, and every community will have a different answer about what they find acceptable and what they do not.

DAVID LEDUC: I think Amelia really makes good points on that, and I think, interestingly, David's example and the example in the article there-- it sounds like that teacher used student data to improve her teaching product. So I think that's an interesting example. Which she did-- she saw the data, she saw they weren't learning, and she said, OK, I know we're going to change this. It's a perfect example.

KATHLEEN STYLES: Hashtag irony.

KRISTIN COHEN: I think this is for everyone on the panel. What is your ultimate fear or concern for what can happen to children's data if it isn't well managed, like if there's a data breach?

AMELIA VANCE: I will say that it's not actually something that can be fixed, I think, by FTC or Department of Ed or any laws. It's the lack of funding and training that's leading to a lack of security which allowed for hacks in districts-- tiny districts where the IT director is the gym teacher is the math teacher. And basically, an overseas terrorist said, hey, we have information about who's special ed or not, and unless you pay us money, we're going to post it all online. There is a safety factor to all of this that we need to take into account. But we have to be very careful as these fears are raised that we make sure we realize what the solutions are-- which at

the end of the day, is really the training and the funding and the guidance that can make more people aware of how to keep this information safe.

RACHAEL STICKLAND: I will say quickly-- security certainly is an issue, obviously, and it's one that's very black and white. You can either protect your data, or you can't. But honestly, my bigger concern about data being collected in schools are the ethical uses of big data and what that means for our future, what it means for our kids, where this data is going to be going. There are a lot of vendors operating in the educational space that don't intend to be there long term. They're collecting a lot of data, and they can be merged or bought by other companies-- large companies. So to get into the meat of that question, I think we need to talk about the ethics of big data, especially in an educational context.

DAVID MONAHAN: And if I may also quickly add-- and by the way, Amelia, I look forward to saying hi to you after the session, because we haven't met, and we've been chatting a lot here. But I don't think it's fair to put it all on the school districts and the lack of funding. A lot of data breaches are for vendors that are not having strong safeguards in place. And we've heard a lot today about the good vendors, and we've heard about the not so good vendors. And one of the biggest reasons that data can be at risk is because vendors don't have the proper protections in place. So don't ask government to-- you came to schools, you convinced them to buy these products, and now you're saying it's on them to protect the information. No, the vendors that are profiting ought to be investing in the protections to keep that data safe.

DAVID LEDUC: I think everybody loses with data breaches, obviously, but it's certainly a shared responsibility. It's the vendors, it's the schools. In so many cases-- in the education environment and outside of it-- what we see so often is you've got a technology provider, and you've got a user-- a customer, whether that's a school or a business or something else-- and there's a breach. And well, gee, the technology provider was maintaining the data, but it was the customer or the user who had a laptop that was not secured or that was left somewhere. So I think it's a shared responsibility. The vendors need to do what they need to do, and they need to make sure they're securing the data, and I think the users-- be it the schools and everyone else-- needs to make sure that they're following through as well.

KATHLEEN STYLES: Here's another question. I think this might mostly be for Steve, but please jump in if you have information. How frequently have you come across vendors who changed their privacy policies or terms of service after the data was collected beyond the original agreement-- sorry, I'm not very articulate-- and what action did you take as a result?

STEVE SMITH: Well, honestly, in our workflow where we are doing individual DPAs with all the vendors that kind of overwrite their privacy policy in terms of service, we're not going back to review those, because it's just being dictated by the DPA. So going that model has relieved us of having to read through all the DPA and all the privacy policies and keeping an eye on those.

AMELIA VANCE: It's worth noting that a lot of the state laws and a lot of these contracts that have gone into effect just happened. Even the California law that's been the model just came into effect-- I think it was the beginning of 2016. So we're really in the early stages of seeing these laws do have penalties, these contracts do have teeth. And we are going to be seeing-- I'd say in

the next year or two-- exactly what the enforcement landscape will look like. But we're still sort of in the infant stage of all of that.

KRISTIN COHEN: OK. So we're coming to the end, but we're just going to close it off with one last question for all of you. What is your number one wish list item that you would give to Kathleen and I as regulators?

DAVID LEDUC: Just one again?

KATHLEEN STYLES: Just one.

DAVID LEDUC: I can't pass, and I can't say it depends.

KRISTIN COHEN: Who's counting?

DAVID LEDUC: I think if I had to pick just one, I would say clarifying this definition of what's an educational purpose and what's a commercial purpose.

KATHLEEN STYLES: And how would you clarify it?

KRISTIN COHEN: She's tough.

DAVID LEDUC: We already answered that. The regulations really seem to hang around that, and that's the point at which the schools can act as an agent and provide the consent, and the technology providers can operate. As I mentioned earlier, I think it's in the best interest of the students. I think it's in the best interests of the teachers and the schools. And I think everybody agrees that we want to have the products be as good as they can be. And I made a joke about David's study that he referenced, but with all seriousness, we didn't used to have data, and now we do. So I think to not use that data-- to not leverage it to make the learning experience better-- I think would be a mistake.

DAVID MONAHAN: I would wish for the holidays that you folks would bring some enforcement actions against the worst offenders. And whether you send some cautionary letters out to a large number of them and sue a smaller number, whether you do your own investigation or check with partners like Common Sense Media who seem to see a lot of good contracts and bad contracts and go after some of the companies that don't have proper privacy policies that don't match up with their apps-- and they're violating the law in other ways-- and show them that the government is watching and intending to stand up for children's privacy.

FRANCISCO NEGRON: I think it would be helpful to have clarification on who actually is responsible for providing notices and obtaining consent from parents. There's, as you know, a lot of confusion in that area. So that's just one small piece. And I'd go back to the general one size does not fit all, because there are different kinds of technologies used in school districts in different ways, and we need to be sensitive to what those are and how they're used.



STEVE SMITH: I'd say clarity around what is an educational record and needs to be protected-- which I know was a question earlier for us-- and just alignment of FERPA and COPPA so there isn't this kind of grey area that we can't figure out.

RACHAEL STICKLAND: I would just agree that modernize FERPA for the 21st century classroom, making sure that it's very clear about what an education record is, and working on some of those definitions.

AMELIA VANCE: I think my main thing sort of echoes other's. I think allowing for COPPA consent in line with the FERPA school official exception is what schools are doing now is what I think makes the most sense in this context. And providing clarity and joint guidance that that is what the intersection of COPPA and FERPA means I think would solve a lot of headaches for multiple stakeholders.

KATHLEEN STYLES: All right. I don't need to stand up there, do I?

KRISTIN COHEN: Whatever you want to do.

KATHLEEN STYLES: I'm just going to sit here. Our concluding remarks-- and I wrote up some beautiful concluding remarks, and they're sitting over there somewhere, so you're going to get the benefit of Kathleen ad libbing a little bit here. So first of all, I wanted to start off by saying what an absolute pleasure it has been to be with you all here today. I have at various snippets of conversation heard us referred to as a nerd herd and a geek fest and a roomful of people that are willing to talk about student privacy all day long. And most of you actually came back from lunch. This has been awesome, and I have enjoyed it so much.

I think we have heard a real diversity of viewpoints here today, and that's why we did this. We wanted to hear a diversity of viewpoints. It is also a pleasure to be here in Washington DC and hear a diversity of viewpoints and hear them civilly expressed and explained to each other so that we can have a conversation rather than an argument. And this has been very, very helpful.

So I want to talk particularly in the thank yous, because as we're sitting here today-- our two agencies, we got together, and we decided we wanted to do a joint workshop. And I'm feeling like the smartest woman in the world, because then we sat back and Kristin Cohen and Peder Magee did all the work putting this together. Thank you guys so much. It has been such a pleasure working with the two of you, and I look forward to working with you more as this goes on. There are a host of other FTC employees who helped to make today possible whose names I do not know-- from the people who checked us in, to the name tags, to the recorders. And I want to thank all of you very much for your work here today.

And thank you to our participants and our panelists. And rather than go by name, let me talk through groups that we have here. First of all, our vendors who came here today-- more of you in the audience than have been up on panels. But for those of you who have been willing to be on panels, you are brave. We thank you. We're happy to have you here. Those of you in the audience, we're glad you came, and we hope you found it useful. Our school officials who have come from all types of school districts all over the country-- we need to hear from you more. It is

such a pleasure to talk with you and to learn more about how this is working in your school districts. It's great to see school districts who are trying to do the right thing and are really pushing forward on this front.

And our different advocacy groups-- both the advocacy groups that have been on panels, whether it's Commercial Free Childhood or Future of Privacy Forum, and then some of you all in the audience are also with different advocacy groups-- you are a vital part of the ecosystem in which we try to define the appropriate rules for student privacy in schools with educational technology. And we appreciate you being here so much and hearing from you regularly.

And then finally-- last, but absolutely not least, Rachael-- our parents and our parent groups. It's the group which is hardest for us as federal officials to hear from are parents. I was talking with somebody with the national PTA earlier today, and it's really hard to talk to parents. Some of us have recently started volunteering in schools just so we can be in schools more and understand more of the on the ground challenges that students and parents and teachers face every day. So I appreciate you all being here and providing your perspective.

In terms of our next steps, we will be sitting down separately and jointly with the Federal Trade Commission after today and pondering through what we've heard here today. I, for one, have read all the comments that were submitted, and I make a promise I'm going to read them all again, because there was some really incredibly thoughtful material that was put in all of those comments. And I don't know what our next steps will be, and I don't have any timeline to announce for our next steps. The point from today was to listen, to hear from you all, and so we can take into account what each of our agencies will be doing as we move forward.

The proceedings today are going to be available on a continuing basis on the FTC website. So in case today was not geeky enough, you can go back and rewatch from 9 o'clock this morning up until now and see all the brilliant comments that were made. What did I forget Kristen?

KRISTIN COHEN: I can't think of a thing.

KATHLEEN STYLES: It's been a pleasure. Thank you all.

[APPLAUSE]